

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

**ORIGINAL
RECEIVED**

DOCKET FILE COPY ORIGINAL

JAN 13 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Redevelopment of Spectrum to
Encourage Innovation in the
Use of New Telecommunications
Technologies

:
:
:
:
:
:

ET Docket No. 92-9

RM-7981

RM-8004

**COMMENTS OF
ASSOCIATED PCN COMPANY**

Associated PCN Company ("APCN"), by its attorney, herein submits its comments in the Commission's Third Notice of Proposed Rulemaking ("Third Notice") in the above-captioned docket.

APCN obtained an early experimental license for PCS to enable it to test its unique spectrum sharing concepts in the Los Angeles areas, concepts which are proving valid in the field. APCN thus comes to this rulemaking from a position of long-standing interest and participation in emerging technologies.¹

APCN, in its various comments in this proceeding, has repeatedly stated its view that the Commission's plan to relocate incumbent 2 GHz licensees is premature and unnecessary. APCN believes that incumbent 2 GHz licensees can

¹APCN also has experimental licenses in New York, New York; Chicago, Illinois and Washington, D.C.

No. of Copies rec'd
List A B C D E

CAF

co-exist in a noninterfering environment with new services while utilizes spectrum sharing techniques, techniques which will be required in the long haul in order to accommodate public safety users, all of whom will remain in the 2 GHz band.

The Third Notice, to which these comments are addressed, proposes a plan for sharing of the 2 GHz band between new services and existing fixed microwave users and/or relocation of the existing users to other spectrum. The transition plan which the Commission proposes is intended to both prevent undue disruption of existing 2 GHz services and allow the introduction of new users into the band. APCN herein offers its views on certain of the issues raised in the Third Notice.

In the Notice of Proposed Rulemaking which initiated this docket, the Commission proposed to allocate 220 MHz of spectrum in the 1.85-1.99, 2.11-2.15, and 2.16-2.20 GHz bands for emerging technologies.² In parallel with this proceeding, and conditioned upon its outcome, the Commission has also proposed that 110 MHz of this 2 GHz spectrum be allocated for PCS services.³ The Commission has proposed that 90 MHz of 2 GHz spectrum be allocated for licensed PCS operations in the 1850-1895 and 1930-1975 MHz bands. However, the recently completed World Administrative Radio Conference ("WARC") agreement included a number of frequency allocations which may have an

²Notice of Proposed Rulemaking in ET Docket No. 92-9, 7 FCC Rcd 1542 (1992).

³Notice of Proposed Rulemaking and Tentative Decision in Gen. Docket No. 90-314, 7 FCC Rcd 5676 (1992).

effect on the Commission's decisions in the present proceeding. In the 2 GHz portion of the spectrum Region 2 received a primary allocation for MSS in the 1970-2010 and 2160-2200 MHz bands, and a secondary allocation in the 1930-1970 and 2120-2160 MHz bands. As it effects PCS, APCN notes that the 1970-1975 MHz band is common to the proposed PCS allocation and the Region 2 primary allocation for MSS in the earth-to-space segment. Satellites serving latin-american countries will undoubtedly have footprints that overlap the southern portion of the United States. A PCS operator who is allocated to this spectrum block may suffer interference to 5 MHz of its frequency allocation. APCN notes that this is also likely to be true for other new services and technologies which are allocated spectrum in portions of the 220 MHz which the Commission is proposing to set aside in this docket.

In discussing transition practices and procedures, the Commission should not lose sight of the fact that licensees of new services in the 2 GHz band will be sharing this spectrum with government and public safety users on an indefinite basis. These users are not required to relocate under any circumstances. As APCN has pointed out elsewhere, over 50% of the 108 microwave licensees in the 1850-1990 MHz band, the frequencies proposed for licensed PCS use, located within 75 miles of San Diego are either public safety or government users. In addition, almost 40% of the 202 such licensees in the Los Angeles market are government users. This means that,

in these abutting markets, containing more than 16 million people, over 100 users representing almost half of the incumbent users will remain in the 2 GHz band on a co-primary basis.

The Commission proposes that after a transition period, during which voluntary relocation agreements can be negotiated, if an emerging technology provider needs an incumbent's frequency, the emerging technology provider can request involuntary relocation of the incumbent. In that case, the Commission proposes to make the emerging technology provider guarantee payment of all relocation expenses, construct the new microwave facilities at the relocated frequencies and demonstrate that the new facilities are comparable to the old facilities. In providing rules and guidelines for involuntary relocations the Commission must keep certain considerations in mind with regard to the provision of comparable facilities. There are hundreds of 2 GHz communications links operating in the United States reliably and without interference to or from other facilities. Essentially, these facilities are being used by their operators as an over-the-air analog to a copper wire between two points. System maintenance, replacement of parts, etc. are a fixed part of a smooth, ongoing operation. Any replacement system for these "well-oiled machines" must be implemented transparently. This transparency should go beyond merely meeting the technical specifications which the Commission discussed in ¶24 of the Third Notice. It must

include items such as training to use the new facilities and frequencies, ensuring the availability of spare parts, institution of proper operating procedures, and other intangibles which go well beyond whether the new facilities meet the technical performance specifications of the old 2 GHz facilities.

There will inevitably be disputes between emerging technology providers and incumbent 2 GHz users. In the case where a new provider goes on the air under the assumption that it will not interfere with the incumbent user but, in fact, interference does occur, APCN believes that the current rules provide adequate avenues for resolution of such disputes. There are, however, two situations in which a dispute resolution mechanism could profitably be put into place at this time. In the first case, the new provider and the incumbent user may be unable to agree at the design/engineering stage on the acceptability and comparability of the replacement system for the existing user. The second case is similar but it is centered on a dispute over proof of performance. These issues are raised in ¶25 of the Third Notice. APCN urges the Commission to promulgate a rule requiring a binding arbitration process. Without some such process the wrangling will be eternal and no resolution will be reached. It is in the interest of both the new provider and the incumbent user to come to closure on the issues which separate them.

APCN's understanding of the relationship between the interference protection and involuntary relocation policies is that where there are disputes involving interference between co-primary new users and incumbent users, the first licensed facility receives the interference protection. On the other hand, if a new technology provider needs an existing user's frequencies, the new provider can request involuntary relocation of the incumbent. APCN presumes that this means that in the event of an interference problem which cannot be solved, or which is resolved to the new user's dissatisfaction, the new technology provider would institute the involuntary relocation process. In that case, keeping in mind APCN's position that spectrum sharing in the 2 GHz band will work, APCN recommends that the transition period before involuntary relocation can be instituted be as short as possible. In ¶27 the Commission tentatively proposed a transition period of not less than three years or more than 10 years. APCN believes that a transition period of three years would be adequate. If spectrum sharing technologies are not introduced or do not work with the efficiency which APCN envisions, in view of the fact that incumbent users will have preference in any interference dispute, rapid possible relocations will be necessary if the emerging technology providers are to be able to develop their new services with the least possible hindrance.

APCN urges the Commission in adopting and instituting a transition plan for the sharing of 2 GHz spectrum and the

relocation of incumbent users that it be aware of the limitations placed on the proposed frequency space for new users placed on that space by WARC and the continuing occupation of that spectrum by government users. Moreover, in effecting involuntary relocation of incumbent users, the Commission must be sensitive to nuances of comparability which go beyond purely the physical facilities and provide for an adequate dispute resolution mechanism. If voluntary relocation becomes necessary, it should become an available remedy as soon as possible.

Respectfully submitted,

ASSOCIATED PCN COMPANY

By: Stuart F. Feldstein
Stuart F. Feldstein

FLEISCHMAN AND WALSH
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 939-7900

Its Attorney

Date: January 13, 1993